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C.2/Blue Paper No. 9/Rev.1
5 May 1975

SECOND COMMITTEE: FOR THE USE
OF MEMBERS OF THE INFORMAL
CONSULTATIVE GROUP ON THE
HIGH SEAS

REVISED CONSOLIDATED TEXT ON THE HIGH SEAS
(Provisions 139 to 153 and 164 to 177 in A/CONF.62/C.2/WP.1)

Provision 139

Every State, whether coastal or not, has the right to sail ships under its flag on the high seas.

Provision 140

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Provision 141

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Provision 141A (formerly provision 143)

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of the United Nations, its specialized agencies or the International Atomic Energy Agency flying the flag of the organization.

Provision 142^{1/}

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

^{1/} Incorporating provisions 142 and 146.

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2. In particular every State shall:

- (a) maintain a register of shipping containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
- (b) assume jurisdiction under its municipal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard, inter alia, to:

- (a) the construction, equipment and seaworthiness of ships;
- (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international labour instruments;
- (c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
- (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
- (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention and control of marine pollution and the maintenance of communications by radio.

5. In taking the measures called for by paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to shipping or installations of another State or to the marine environment. The flag State and the other State shall co-operate in the

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conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Provision 143^{1/}

Provision 144

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the Government of the State and whose name appears in the appropriate Service List on its equivalent, and manned by a crew who are under regular armed forces discipline.

Provision 145^{2/}

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Provision 146^{3/}

Provision 147

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Provision 148

1. Every State shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

1/ This provision is now provision 141A.

2/ For certain delegations, this provision should read: "Ships owned or operated by a State shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State."

3/ This provision has been incorporated into provision 142.

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- (a) to render assistance to any person found at sea in danger of being lost;
 - (b) to proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;
 - (c) after a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.
2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

Provision 149

[The preservation of the marine environment of the high seas is being dealt with in the Third Committee.]

Provision 150^{1/}

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas, provided that such cables and pipelines do not subsequently present a risk to navigation.
2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources in accordance with the provisions of the present Convention, the coastal State may not impede the laying or maintenance of such cables or pipelines.
3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the sea-bed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Provision 151

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

^{1/} The drafting of this provision is without prejudice to the definition of the high seas and the extent to which these provisions will apply in the economic zone.

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Provision 152

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Provision 153

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Provision 164^{1/}

Provision 165

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall, ipso facto, be free.

Provision 166

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Provision 167^{2/}

Piracy consists of any of the following acts:

- (a) any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in sub-paragraphs (a) or (b).

Provision 168

The acts of piracy, as defined in article ... (provision 167), committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

1/ This provision is now provision 174B.

2/ For certain delegations, this provision does not cover all acts which, under international law, should be included.

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Provision 169

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article ... (provision 167). The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Provision 170

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Provision 171

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Provision 172

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

Provision 173

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Provision 174^{1/}

Provision 174A (formerly 177)

1. All States shall co-operate in the suppression of unauthorized broadcasting from the high seas.
2. Any person engaged in unauthorized broadcasting from the high seas may be prosecuted before the Court of the flag State of the vessel, the place of registry of the installation, the State of which the person is a national, any place where the transmissions can be received or any State where authorized radio communication is suffering interference.

1/ Note: Consultations with respect to this matter have not been completed.

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3. On the high seas, a State having jurisdiction in accordance with paragraph 2 may, in conformity with article ... (provision 174B), arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

4. For the purposes of the present Convention "unauthorized broadcasting" means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.

Provision 174B (formerly 164)

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with provisions 144 and 145, is not justified in boarding her unless there is reasonable ground for suspecting:

- (a) that the ship is engaged in piracy;
- (b) that this ship is engaged in the slave trade;
- (c) that, subject to ... (provision 174), the ship is engaged in illicit traffic in narcotic drugs and psychotropic substances; ^{1/}
- (d) that the ship is without nationality; or that, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicious prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

4. These provisions shall apply mutatis mutandis to military aircraft.

5. These provisions shall also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

Provision 174^{2/}

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone

^{1/} Note: Consultations with respect to this matter have not been completed.

^{2/} Further consideration may be given to the drafting of this provision in the light of decisions of the Conference with respect to the economic zone, the continental shelf and the contiguous zone.

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of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article ..., the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with the present Convention to the exclusive economic zone or the continental shelf, including such safety zones. ^{1/}

3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and specially authorized to that effect.

6. Where hot pursuit is effected by an aircraft:

(a) the provisions of paragraphs 1 to 4 of this article shall apply *mutatis mutandis*;

(b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

^{1/} Certain delegations consider that hot pursuit in such cases may not continue beyond the exclusive economic zone or the continental shelf.

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7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone of the high seas, if the circumstances rendered this necessary.

8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the rights of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Provision 177^{1/}

^{1/} This provision is now provision 174A.